

Redistricting an Incumbent Out of His District

Jenkins v. Ray (Clay D. Land, M.D. Ga. 4:06-cv-43)

After school-board redistricting had received preclearance pursuant to section 5 of the Voting Rights Act, it was discovered that the district line ran through the school-board chair's property and his dwelling was no longer in the district he represented. Three months before a school-board election, six voters filed a federal complaint challenging the preclearance. The assigned judge issued a temporary restraining order suspending the ballot-qualification deadline, and a three-judge district court held an evidentiary hearing at the end of the next month. The three-judge court determined that redistricting the incumbent out of his district required preclearance, so election officials allowed him to continue to represent and vote in his original district.

Subject: District lines. *Topics:* Section 5 preclearance; three-judge court; getting on the ballot; enforcing orders; provisional ballots.

On April 17, 2006, three months before the next election, six voters in Randolph County, Georgia, filed a federal action in the Middle District of Georgia complaining that the incumbent chair of the school board had been redistricted into another district although section 5 preclearance of the redistricting had been obtained on representation that neither he nor any other incumbent would change districts.¹ The plaintiffs sought a temporary restraining order, a preliminary injunction, and a three-judge district court to hear their claim that Georgia had failed to properly preclear the new school-board districts as required by section 5 of the Voting Rights Act.²

The court assigned the case to Judge Clay D. Land, who requested a three-judge court on the following day.³ The circuit's chief judge empaneled a three-judge court on April 24.⁴ It was the practice of the district for the clerk's office to screen cases that might require three-judge courts and alert

1. Complaint, *Jenkins v. Ray*, No. 4:06-cv-43 (M.D. Ga. Apr. 17, 2006), D.E. 1; *Cook v. Randolph County*, 573 F.3d 1143, 1146–47 (11th Cir. 2009); see Harry Franklin, *Randolph School Board Member to Stay in District*, Columbus Ledger-Enquirer, June 8, 2006 (reporting that two of the plaintiffs were the superintendent of schools and his wife).

2. Motions, *Jenkins*, No. 4:06-cv-43 (M.D. Ga. Apr. 17, 2006), D.E. 9, 10; see Voting Rights Act of 1965, Pub. L. No. 89-110, § 5, 79 Stat. 437, 439, *as amended*, 52 U.S.C. § 10304 (requiring preclearance of changes to voting procedures in jurisdictions with a certified history of discrimination and requiring that preclearance disputes be heard by a three-judge district court).

On June 25, 2013, the Supreme Court declined to hold section 5 unconstitutional, but the Court did hold unconstitutional the criteria for which jurisdictions require section 5 preclearance. *Shelby County v. Holder*, 570 U.S. 529 (2013).

3. Letter, *Jenkins*, No. 4:06-cv-43 (M.D. Ga. Apr. 19, 2006), D.E. 11.

Tim Reagan interviewed Judge Land for this report by telephone on October 11, 2012.

4. Order, *Jenkins*, No. 4:06-cv-43 (M.D. Ga. Apr. 24, 2006), D.E. 21.

judges of their review as soon as the case was filed.⁵ Judge Land reviewed the case and agreed with the clerk's office that a three-judge court was required.⁶

After a hearing on April 21,⁷ Judge Land issued a temporary restraining order declaring that the qualification period for the ballot, which was to begin on April 24, would remain open beyond the previously set closing date of April 28 until further order of the court.⁸

The three-judge court held an evidentiary hearing on May 31.⁹ On June 5, the court ruled that the assignment of the African American incumbent to a different district required preclearance.¹⁰ The redistricting followed the 2000 census.¹¹ After redistricting, the incumbent's property was partly in one district, a predominantly African American district, and partly in another, a predominantly White district, and his dwelling was not in the district he represented.¹² For the 2002 election, in response to a challenge by a competing candidate, the incumbent was allowed to continue representing his original district.¹³ For the 2006 election, election officials decided that they had made a mistake in 2002.¹⁴ The three-judge court decided that assigning the incumbent to a different district required section 5 preclearance.¹⁵

Election officials permitted the incumbent to vote in and represent his original district, and he was reelected.¹⁶ Because preclearance was still pending, the incumbent had to cast a provisional ballot, and he was not issued a permanent voting card showing his registration in the original district.¹⁷ On May 24, 2007, the three-judge court denied a motion for contempt.¹⁸

On September 12, 2006, the Justice Department decided not to preclear the assignment of the incumbent to a different district, and so he remained a voter and representative in his original district.¹⁹

Meanwhile, a removed action by the incumbent was pending before Judge Land.²⁰ On April 17, 2006, the incumbent filed an action in state court

5. Interview with Hon. Clay D. Land, Oct. 11, 2012.

6. *Id.*

7. Minutes, *Jenkins*, No. 4:06-cv-43 (M.D. Ga. Apr. 21, 2006), D.E. 17.

8. Order, *id.* (Apr. 21, 2006), D.E. 18.

9. Minutes, *id.* (May 31, 2006), D.E. 41.

10. Order, *id.* (June 5, 2006), D.E. 44 [hereinafter June 5, 2006, *Jenkins* Order], 2006 WL 1582426; *see Cook v. Randolph County*, 573 F.3d 1143, 1145, 1147 (11th Cir. 2009); *see also Franklin*, *supra* note 1.

11. *Cook*, 573 F.3d at 1145; June 5, 2006, *Jenkins* Order, *supra* note 10, at 1.

12. *Cook*, 573 F.3d at 1145; June 5, 2006, *Jenkins* Order, *supra* note 10, at 1–2.

13. *Cook*, 573 F.3d at 1145–46; June 5, 2006, *Jenkins* Order, *supra* note 10, at 2; *Jordan v. Cook*, 277 Ga. 155, 587 S.E.2d 52 (Ga. 2003).

14. June 5, 2006, *Jenkins* Order, *supra* note 10, at 2.

15. *Id.* at 3–5.

16. Order at 3–5, *Jenkins v. Ray*, No. 4:06-cv-43 (M.D. Ga. May 24, 2007), D.E. 57, 2007 WL 1544741.

17. *Id.*

18. *Id.* at 5–6.

19. *Cook v. Randolph County*, 573 F.3d 1143, 1145, 1147 (11th Cir. 2009); Summary Judgment at 5, *Cook v. Randolph County*, No. 4:06-cv-138 (M.D. Ga. Jan. 4, 2008), D.E. 101 [hereinafter *Cook* Summary Judgment].

seeking his assignment to his original district.²¹ On November 30, the defendants removed the action to federal court in the Middle District,²² which assigned the case to Judge Land.²³ He denied the plaintiff's motion to remand on February 2, 2007.²⁴ On January 4, 2008, Judge Land determined that the incumbent's prayers for injunctive relief were moot and his claims for damages were without merit.²⁵ The court of appeals affirmed the decision on July 7, 2009.²⁶

20. Docket Sheet, *Cook*, No. 4:06-cv-138 (M.D. Ga. Nov. 30, 2006) [hereinafter *Cook* Docket Sheet].

21. Complaint, *Cook v. Randolph County*, No. 2006-cv-54 (Ga. Sup. Ct. Randolph Cty. Apr. 17, 2006), *filed as* Ex. 2, Amended Notice of Removal, *Cook*, No. 4:06-cv-138 (M.D. Ga. Dec. 1, 2006), D.E. 5 (electronic filing of removal documents); *Cook*, 573 F.3d at 1146.

22. Notice of Removal, *Cook*, No. 4:06-cv-138 (M.D. Ga. Nov. 30, 2006), D.E. 1; *Cook*, 573 F.3d at 1148.

23. *Cook* Docket Sheet, *supra* note 20.

24. Order, *Cook*, No. 4:06-cv-138 (M.D. Ga. Feb. 2, 2007), D.E. 60; *Cook*, 573 F.3d at 1148.

25. *Cook* Summary Judgment, *supra* note 19 (finding qualified immunity for the individual defendants, municipal immunity for the municipal defendants, and insufficient evidence for conspiracy claims); *Cook*, 573 F.3d at 1148–49.

26. *Cook*, 573 F.3d 1143.